IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.2584 OF 2004

Bastimal Hajarimal Porwal
Jain, Age: 58 years,
Occ: Business,
R/at : Vardaman Estate,
D-404, Chhivdi Galli,
Lalbaug, Mumbai-400 012. .... Petitioner

- Versus -

1. Senior Inspector of Police,
   Byculla Police Station,
   Mumbai.
2. Deputy Commissioner of
   Police (Zone-III)
3. Joint Commissioner of
   Police (Crime)

Having office at Byculla,
Mumbai.

4. Commissioner of Police,
   O/o Commissioner of Police,
   Opp: Crawford Market,
   Mumbai.
5. State of Maharashtra .... Respondents

Shri S.V. Marwadi for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 20, 2005

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. By the present petition the petitioner is seeking the order of transfer of the investigation in C.R. No.286/2004, lodged with the Byculla Police Station to other competent investigating agency on the ground that the investigation has been carried out not only in a haphazard manner, but to hush-up the crime by suppressing the facts and destroying material pieces of evidence as well as with the intention to protect the accused contrary to the provisions of law.

3. It is the case of the petitioner that his daughter by name Dimple was married to one Dhiraj Sukanraj Kothari on 8-6-2003. She was an educated woman, having completed her graduation and since the time of her

marriage she was residing with her husband and her in-laws at Sumer Tower, B-12/1202, Love Lane, Byculla (East), Mumbai. Few months prior to August, 2004, the younger brother of the husband of the daughter of the petitioner, namely Amit, got married to one Pooja and they were also residing in the same building. Though Dimple was harassed by the family members in her in-laws' house, she did not inform about the same for some period of time to the petitioner or to the other members of his family. Initially Dimple used to attend to the family business of her father-in-law, but subsequently she was not allowed to attend to the said business.

4. On 12-8-2004, the father-in-law of Dimple called the petitioner at his residence on mobile cell pursuant to which the petitioner came to the residence of her daughter but he was shocked to see several persons having gathered in the said house and he was informed that his daughter had committed suicide by hanging herself in the bedroom. On 16-8-2004 the petitioner lodged a complaint with the Byculla Police Station suspecting foul play and that he had reason to believe that Dimple was killed in the house of her in-laws, and it was not a suicide as was reported by the in-laws of his daughter. The police at the Byculla police station however preferred to register the offence only under

Sections 306 and 498-A read with Section 34 of the Indian Penal Code (IPC) and did not record the offence under Section 302 of the IPC. It is the case of the petitioner that all the efforts on the part of the petitioner to persuade the respondents to conduct the investigation on proper lines having failed, the petitioner is left with no alternative than to approach this Court and hence the present petition.

5. On the other hand, it is the case of the investigating officer Shri Ashok Laxman Takalkar, Senior Inspector of Police, Byculla Police Station that the investigation has been carried out properly and as per the procedure known to law. It is his case that it was revealed from the investigation that it was a case of a normal suicide and not of murder and which was confirmed by the doctor and therefore he having conducted the investigation honestly, diligently and bona fide, yet he could not file the charge-sheet since the present petition was filed. It is his case that the post-mortem report and the opinion given by the doctor clearly discloses the death by suicide and therefore the allegations by the petitioner are totally false. It is also his case that the investigation carried out by him was supervised by his superiors and even the Commissioner of Police, at Mumbai was kept informed about the progress of the investigation.

6. We have heard at length the learned Advocate for the petitioner and the learned A.P.P. who was all-throughout assisted by the investigating officer Shri Ashok Laxman Takalkar. We have perused all the records placed before us in relation to the investigation carried out by the police. We have also, in the presence of the Advocate for the petitioner, learned A.P.P. and the investigating officer, inspected the premises where the suicide was allegedly committed by the deceased.

7. Perusal of the post-mortem report of the deceased discloses that the doctor had opined the principal cause of death to be "Asphyxia following compression of neck as a result of ligature (unnatural)". Apparently therefore, the death had occurred not in a normal manner but the cause thereof was clearly disclosed as "unnatural". Further, in relation to the description pertaining to the surface wounds and injuries on the body of the deceased recorded by the doctor, who had conducted the post-mortem, certainly creates doubt as to whether it is really a suicide or a death by strangulation or otherwise. Plain reading of the post-mortem report by the doctor, along with the description of the surface wounds and injuries, discloses that the circumference of the neck of the

deceased was 32 cm while the so called length of the mark seen around the neck was of 27 cm. It is to be noted that the doctor has opined the same to be the mark and not a ligature mark. Besides, the ligature mark is described separately. That apart, the doctor has clearly referred to the presence of depressed, firm mark, dark brown in colour at two places on the chin of the deceased. Indeed even the photographs of the body of the deceased which were shown to us clearly revealed that those marks were different from the marks around the neck of the deceased. Is it a case of dupatta having been pressed around the neck by some other person on account of which the marks were found around the neck, including the portion of the nape of the neck? To a specific query in that regard to the investigation officer, in the course of the hearing of the matter, it was revealed that there was absolutely no investigation carried out by the investigation officer in that regard. Inspite of the fact that the post-mortem report obviously disclosed more than one mark around the neck, apart from two different marks disclosing injuries near the chin, surprisingly no investigation is carried out in that regard, nor the investigation officer has obtained any medical opinion in that regard before arriving at the conclusion that it was a case of normal suicide.

8. It is to be noted that it is not the case nor it can be the case of the respondents that the investigation officer had not noted the different marks around the neck of the deceased. In the letter dated 30-11-2004 sent from the Department of Forensic Medicine, Seth G.S. Medical College, Mumbai, in reply to the letter dated 17-11-2004, written by the Senior Inspector of Police of the Byculla Police Station, there was specific mention in para 3 that the doctor who had conducted the post-mortem was not shown the material which was allegedly used for the purpose of hanging by the deceased. Besides, there were injuries seen on the neck of the deceased which were different from those caused in the course of hanging. Inspite of the specific disclosure in that regard in the said letter by the forensic expert, there is no explanation for absence on the part of the investigation officer to investigate further into the matter.

9. The learned Advocate for the petitioner has also drawn attention to Clause 12 of the post-mortem report which says that ""PM Lividity not seen". He has also drawn our attention to the observations in Modi’s Medical Jurisprudence & Toxicology which are to be found in Chapter 3 thereof under the heading "Hanging". The same read that "Hanging is also a common method of self-destruction. It must be carefully distinguished

from a murder in which the body has afterwards been hung up to simulate suicide. The position of the post-mortem lividity should be in the legs and hands if the body is vertical. If the body has been hung up after death, where there has been a period where it lay flat on the ground before hanging, then the post-mortem lividity may still be present in the usual position on the back of the shoulders. This naturally arouses grave suspicion." The statements of the inmates of the deceased's house recorded by the investigating agency disclose that from 3:00 or 3:30 till 5 0'clock she was in her bedroom and she committed suicide during that period. During the said period none of the inmates of the house appears to have entered the said room. Obviously, if the suicide was committed during the said period, considering the time period for which the body might have been hanging, the post-mortem lividity should have been seen in the legs and hands of the deceased. If she had committed suicide just few minutes prior to opening of the door around 5:00-5:30 p.m. and thereafter she was brought down and her body was laid to lay on the bed, the post-mortem lividity should have been seen in the back of the shoulder. How was it that no lividity was seen in case of Dimple? The investigation record appears silent about it.

10. As far as the ligature marks are concerned, the

Modi’s Medical Jurisprudence & Toxicology states that:-

> "The ligature mark around the neck should be carefully studied, and the doctor must be satisfied that it is the original mark, usually with the suspension point either near one ear or at the back of the neck. A lower transverse ligature mark not corresponding to the position of the rope or wire might suggest that strangulation by ligature has taken place in a murderous manner, with later suspension to attempt to conceal the crime."

Undisputedly, the investigation officer did not investigate regarding the ligature mark, and did not consider it necessary to disclose to the doctor who had conducted the post-mortem on the deceased’s body, the materials allegedly used for the purpose of hanging. There was also failure to attach the said material in the course of the investigation in the manner it was required to be attached and sealed.

11. The investigation done by the respondent No.1 and the records in that regard placed before us disclose

that the deceased had gone to her room after lunch and after seeing T.V.. The statement of Prashant N. Pandey, who is stated to be the servant of the in-laws of the deceased, in his testimony has stated that after switching off the T.V., Dimple proceeded to her bedroom to sleep. Further that after closing the door from inside, she went to sleep. He took a nap in the adjoining dinning hall and at about 5 0'clock in the evening he got up. At that time, two painters arrived at their house for the purpose of painting of the bedroom of the deceased. They were, however, informed by the mother-in-law of Dimple that as Dimple was sleeping in the same room, they could come after some time. After having tea along with the mother-in-law and Ms Pooja, the sister-in-law of Dimple, the said Prashant proceeded to the market. If the deceased had been to her bedroom and had closed the door from inside, does it mean that she had latched the door from inside? When the two painters had come for painting of the bedroom wherein Dimple was allegedly sleeping, had any one verified as to whether she was really sleeping at that time in the said room, and if so, by whom, and how? On that occasion, did anybody open the door of the room, and if so, how was it opened? If the door was latched from inside, how was it opened at the time when the inmates of the flat found the deceased hanging from the ceiling fan? Who opened the door? The investigation

pertaining to all these points appears totally silent.

12. Undisputedly, it was informed to the investigation officer that the deceased, in order to reach to the ceiling fan for the purpose of hanging, stood on a cardboard box which was full of clothes stored therein. After standing on the said box, which was kept on the bed, Dimple could reach to the ceiling fan in order to tie the dupatta to the said fan. However, till 10-1-2005 i.e. much after commencement of hearing of the present petition, there was neither attachment of such box nor even a panchnama in relation to such box. Only after filing of this petition and commencement of the arguments, that the investigation officer thought it fit to draw a panchnama in relation to a box and to attach the same. The alleged incident occurred on 12-8-2004. The petition was heard in the presence of the investigation officer on 22-12-2004. The said panchnama was drawn on 10-1-2005. There is nothing to disclose that the box in respect of which the panchnama has been conducted on 10-1-2005 was in fact the same box which was allegedly used by the deceased. There is nothing in the investigation materials to disclose that any steps were taken by the investigation officer to prevent the inmates of the house from interfering with such box allegedly used by the deceased. Undisputedly, the in-laws of the deceased vacated the flat sometime in

December, 2004 and since then the flat is being occupied by some other family. On what basis the box which was stated to have been attached on 10-1-2005 under a panchnama can be said to be same box which was allegedly used by Dimple on the date of her death is not known. There is no material collected in that regard by the investigation officer.

13. The dupatta which was allegedly used for hanging purpose, was not shown to the doctor who had conducted the post-mortem. The scene of offence panchnama though refers to attachment of dupatta, it does not disclose any description thereof, nor it appears to have been kept under proper seal. No reason has been disclosed for failure to produce the said dupatta before the doctor who had conducted the post-mortem examination. Besides, in the absence of proper packing and sealing of the dupatta stated to have been attached at the time of drawing the scene of offence panchnama, one wonders as to how the prosecution will be able to establish that the same dupatta was used by the deceased for hanging.

14. The Section 174 of the Code of Criminal Procedure prescribe certain mode in relation to inquest inquiry when the information received by the police relates to the death of a person on account of suicide and it requires such inquiry to be made by the authorities

specified under the said provision of law. The sub-section (3) thereof further provides that when the case involves suicide of a woman within seven years of her marriage or even the death of a woman within seven years of her marriage in any circumstances sufficient to raise a reasonable suspicion that some other person might have committed the offence in relation to such woman, than the inquest has to be held by the Magistrates who are specified under sub-section (4) of Section 174.

15. The Section 176 of the Cr.P.C. specifically provides that when it relates to the death of a woman, either on account of suicide or in any circumstances sufficient to raise reasonable suspicion about the involvement of some other person in her death and such death occurs within seven years from the date of her marriage, the nearest Magistrate, namely, either the District or the Sub-Divisional Magistrate or any other Executive Magistrate empowered to hold inquest shall hold an inquiry into the cause of death either in support or in addition to the investigation held by the police officer. The mandate of Section 176 makes it abundantly clear that moment such death occurs, the intimation in that regard is necessarily to be given to the Magistrate by the police officer who receives the information regarding such death, and the Magistrate

shall hold an inquiry into the cause of death in addition to the investigation carried out by the police officer.

16. The records placed before us in the case in hand nowhere disclose any such inquiry having been conducted by any Magistrate. The records also nowhere disclose that any Magistrate was informed about the suicide of Dimple in terms of Section 174 by the investigating officer so as to require the Magistrate to conduct the inquiry in terms of Section 176(1). Undisputedly, the death of Dimple had occurred within a period of seven years and it was reported to be a suicide. In fact the marriage took place on 8-3-2003 and the woman expired on 12-8-2004. The death of the woman was within a period of one-and-half year. In any case, the circumstances disclosed in the matter were apparently sufficient to have reasonable doubt about the cause of her death, and the possibility of a third person’s involvement in the matter. Besides the post-mortem report dated 13-8-2004, prepared on the very next day of the death, revealed the cause of death to be "unnatural".

17. In the affidavit in-reply filed by the respondent No.1, it has been stated that from the investigation conducted by him it was a case of suicide and not of murder and the same is also clear from the queries

answered by the doctor and he has further stated that "I most respectfully say that I have honestly, diligently and bonafidely conducted the investigation, however, since the present Writ Petition has been filed, I have not filed the chargesheet." This statement apparently discloses that but for the filing of the present petition, the investigation officer would have filed the chargesheet on the basis that it was a suicide. The enumeration of various lapses on the part of the investigation officer, as stated above, therefore would reveal that but for filing of the petition, the investigation officer, inspite of haphazard and incomplete investigation, would have proceeded to file the chargesheet on the assumption that the incident was a case of normal suicide.

18. Investigation relating to a death of a person requires collection of every material and relevant piece of evidence which could establish the cause of the death and the identity of the culprit. It involves application of mind as well as investigative acumen of the investigating officer and the same should be reflected from the records of the investigation proceedings. Considering the apathy and failure to investigate in relation to the observations made in the post-mortem report, failure to attach the dupatta in the manner it was required to be attached and keep it

properly in a sealed packet, failure to produce the dupatta for inspection by the doctor at the time of the post-mortem examination, failure to attach the box allegedly used by the deceased at the time of the alleged suicide, to investigate as to how and by whom the door of the bedroom was opened to ascertain whether the deceased had been sleeping in the room earlier to the alleged suicide as well as when the alleged suicide by the deceased was allegedly known to the inmates of the premises, as also non-compliance of the provisions of law comprised under Sections 174 and 176 of the Cr.P.C., apart from various other points the narration of which is not necessary, can it be said that the investigation has been done honestly, sincerely, diligently and efficiently? On the contrary, the same obviously disclose reluctance on the part of the investigation officer, either intentionally or otherwise, to ascertain the real cause of the death of Dimple, to ascertain whether there is any other person/s involved in the death of Dimple, and whether there is any foul play in the death of the Dimple. This apparently justifies the contention of the petitioner for transfer of the investigation to some other competent investigating agency.

19. The respondents, at this stage, are unable to satisfy us that the various acts of omission and

commission narrated above, besides others which were pointed out in the course of arguments, to have been done either unintentionally or by a sheer bona fide mistake or for any justifiable reason. It is pertinent to note that in the affidavit in-reply filed by the investigating officer Shri Ashok Laxman Takalkar, Senior Inspector of Police, Byculla police station, it is stated that "I most respectfully say that the investigation in the said matter has been done by me properly as per the procedure. I further say that the papers of the investigation are also being looked into by my immediate superiors who have not doubted my bonafides. I most respectfully say that the investigation is being carried out under the direction of the Commissioner of Police Mumbai and my immediate superiors." The affidavit of Shri Ashok Laxman Takalkar also discloses a categorical statement to the effect that the progress of the investigation was reported to his superior from time to time. The relevant statement in that regard in his affidavit reads thus: "It would be pertinent to point out here that I have also reported about the progress of the investigation to my superiors from time to time.". As already stated above, the narration of various lapses in the course of the investigation referred to hereinabove apparently justify the contention on behalf of the petitioner about the lack of bona fide in the investigation process by the

investigating officer. The investigation related to an unnatural death of a woman within a period of one-and-half year from the date of her marriage and the body was found in the circumstances narrated above which were more than sufficient to raise doubt about the claim of the in-laws that the death of Dimple was on account of suicide, and yet, it was accepted as a forgone conclusion by the investigating officer on the basis of haphazard investigation which is claimed to have been supervised by the superiors of the investigation officer and further that such investigation was being carried under the direction of the Commissioner of Police, Mumbai. It is also pertinent to note that the representation made by the petitioner to the Commissioner of Police on 1-10-2004 does not seem to have been attended to with the required seriousness in the matter. All these things leave no option than to order the transfer of the investigation to the Central Bureau of Investigation as an investigation done in the above manner having been found blessed by the superiors in the police department, including the Commissioner of Police, Mumbai, no purpose would be served by transferring the investigation to any branch or department of the police in Mumbai.

20. In the facts and circumstances of the case, the judgment would not be complete by merely transferring

the investigation. The pathetic, disparaging and irresponsible manner in which the investigation has been carried out by the investigation officer Shri Ashok Laxman Takalkar certainly raises doubt about his bona fide and calls for inquiry relating to the possibility of his role in the lapses narrated above as well as his involvement, if any, in suppressing the real cause of the death of Dimple and the possibility of illegally affording protection to the person/s responsible for the same. There was absolutely no justification for arriving at a hasty conclusion of suicide by Dimple. It needs thorough investigation in the matter. Whether the lapses were on account of negligence and carelessness, or intentional or otherwise, also need to be enquired into and if found guilty, to be punished. Since the investigation is stated to have been carried out under the direction of the Commissioner of Police, Mumbai and the superior officers of the Senior Inspector of Police Shri Ashok Laxman Takalkar, it is necessary to ascertain whether and to what extent those officers or any one of them who were or was in any way connected with the investigation or supervision thereof are or is also involved in the matter in any manner, as also, as regards their or his role in the acts of omissions and commissions by the investigating officer. There is also every reason to doubt about the efficiency and ability of the said police officer Shri Ashok Laxman Takalkar to

conduct investigation in relation to criminal offence, particularly of serious nature like death, rape, etc.

21. Considering the entire approach of the investigation officer, and the manner in which the investigation in the case in hand has been carried out, prima facie there is reason to doubt his efficiency and competency to conduct investigation in relation to serious offences like the death of a person and therefore it calls for further direction to the respondents/authority to refrain from entrusting any investigation relating to any serious offence to the said officer till the inquiry against him comes to its logical end. In case there is any such investigation proceeding pending with the respondent No.1, the same need to be withdrawn forthwith till the inquiry as regards the conduct of the respondent No.1 in relation to the matter in hand is fully enquired into and appropriate decision is taken by the competent authority in that regard. The said officer, namely Shri Ashok Laxman Takalkar, Senior Inspector of Police at Byculla police station should forthwith handover all the case papers of the investigations which are being carried out by him to the Commissioner of Police in order to enable the latter to entrust the same to other police officer/s who will be able to conduct the investigation properly and efficiently.

22. In the result, the petition succeeds. While allowing the petition in terms of the prayer clause (a), the investigation in the case in hand is ordered to be transferred to the Central Bureau of Investigation (CBI) and the respondents are directed to handover all the materials so far collected in the course of the investigation to the CBI, without causing any destruction or disturbance or interference in any manner therein in order to enable the CBI to conduct the investigation as directed herein, and further that the CBI shall take charge of the said investigation forthwith and shall conduct and complete the same as expeditiously as possible. Such investigation shall also include the one relating to the acts of omission and commission by the investigating officer Shri Ashok Laxman Takalkar and the involvement of his senior officers, if any. Meanwhile, the respondents to withdraw all the investigation proceedings pending with Shri Ashok Laxman Takalkar forthwith and to handover the same to other officer/s who could conduct the investigation appropriately and efficiently. Besides, till the investigation in the matter in hand gets over and proper action based on the result of the investigation is taken, it is also necessary to keep the said police officer, namely Shri Ashok Laxman Takalkar away from the Byculla Police Station and should not be

entrusted with any assignment which empowers investigation in relation to any serious offence. This shall not preclude the Government to initiate disciplinary proceedings against Shri Ashok Laxman Takalkar; in fact, we do expect the Government to initiate those proceedings in accordance with the provisions of law and to take appropriate decision therein. The facts and circumstances of the case warrant imposition of exemplary costs of Rs.10,000/-, to be paid by the respondent, investigation officer Shri Ashok Laxman Takalkar. The rule is made absolute in above terms with costs of Rs.10,000/-, to be paid by Shri Ashok Laxman Takalkar to the petitioner within a period of fifteen days from today.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)